

**June 2006**

## **MJI Publications Updates**

**Crime Victim Rights Manual (Revised Edition)**

**Criminal Procedure Monograph 2—Issuance of  
Search Warrants (Third Edition)**

**Criminal Procedure Monograph 6—Pretrial Motions  
(Third Edition)**

**Domestic Violence Benchbook (3rd ed)**

**Michigan Circuit Court Benchbook**

**Sexual Assault Benchbook**

**Traffic Benchbook—Third Edition, Volume 3**

## Update: Crime Victim Rights Manual (Revised Edition)

### CHAPTER 4

#### Protection From Revictimization

#### 4.11 Criminal Offenses That May Be Committed While Threatening or Intimidating a Victim

##### E. Malicious Use of the Telephone

Effective June 1, 2006, 2006 PA 60 and 61 expanded the conduct prohibited by MCL 750.540 and increased the severity of offenses committed under the statute. At the top of page 76, replace the first bullet and its corresponding content with the following language:

- MCL 750.540(5)(a) makes it a two-year felony to willfully and maliciously connect with, access, use, or interfere with any electronic medium of communication\* or its content without authorization. Where a violation of MCL 750.540 results in any person's injury or death, the offense is a felony punishable by not more than four years. MCL 750.540(5)(b). In *People v Hotrum*, 244 Mich App 189 (2000), the Court of Appeals held that ripping a telephone cord from the wall during a domestic violence incident is conduct covered by this statute.

\*Including the Internet, a computer, a computer program, a computer system, a computer network, a telephone, or a telegraph. MCL 750.540(6).

## Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

### Part A—Commentary

#### 2.14 Other Exceptions Applicable to Search Warrants

##### E. Exigent Circumstances Doctrine

Insert the following text before the last full paragraph on page 33:

Where “officers were confronted with ongoing violence occurring within [a] home” during their investigation of a neighbor’s early morning complaint about a loud party, exigent circumstances justified the officers’ warrantless entry. *Brigham City, Utah v Stuart*, 547 US \_\_\_, \_\_\_ (2006) (emphasis omitted). In *Brigham City*, the police officers were responding to a “loud party” complaint when they heard people shouting inside the residence at the address to which they responded. The officers walked down the driveway to further investigate and saw two juveniles drinking beer in the backyard of the residence. Through a screen door and some windows, the officers observed a physical altercation in progress in the kitchen. The officers saw one of the adults spitting blood in the kitchen sink after a juvenile punched him in the face, and when the other adults attempted to restrain the juvenile using force enough to move the refrigerator against which the juvenile was pinned, one of the officers opened the screen door and announced their presence. The officers’ presence went unnoticed until one of them walked into the kitchen and repeated the announcement. The individuals in the kitchen eventually realized that police officers were present and stopped struggling with the juvenile. *Brigham City*, *supra* at \_\_\_.

A law enforcement officer’s warrantless entry of a home is permitted “when [the officer] ha[s] an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.” *Id.* at \_\_\_. The defendants in *Brigham City* argued that evidence discovered as a result of the officers’ warrantless entry should be suppressed because “the officers were more interested in making arrests than quelling violence.” *Id.* at \_\_\_. The United States Supreme Court disagreed and explained that whether an officer’s subjective motivation for a warrantless entry is to provide

emergency assistance to an injured person or to seize evidence and effectuate an arrest is irrelevant to a determination of reasonableness. *Id.* at \_\_\_\_\_. If an officer's action is justified under an objective view of the circumstances, the action is reasonable for Fourth Amendment purposes, regardless of the officer's state of mind. *Id.* at \_\_\_\_\_.

# June 2006

## Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

### Part 2—Individual Motions

#### 6.21 Motion to Compel Discovery

##### 4. Other Provisions of MCR 6.201

Insert the following text immediately before subsection (5) on page 51:

Without a showing of good cause, a trial court is not authorized to order discovery of an item not set forth in MCR 6.201. *People v Greenfield*, \_\_\_\_ Mich App \_\_\_\_, \_\_\_\_ (2006). Because a videotape of a defendant's post-arrest Datamaster breath tests is not a subject of mandatory discovery expressly listed in MCR 6.201(A) and is not contemplated by the categories of discoverable evidence described in MCR 6.201(B), a trial court may not compel its discovery absent good cause. *Greenfield, supra* at \_\_\_\_\_. A prosecutor's failure to produce evidence not addressed by MCR 6.201's description of discoverable evidence does not constitute "good cause" for entry of an order under MCR 6.201(I) to produce such evidence. *Greenfield, supra* at \_\_\_\_\_.

## Update: Domestic Violence Benchbook (3rd ed)

### CHAPTER 3

#### Common “Domestic Violence Crimes”

#### 3.14 Other Crimes Commonly Associated with Domestic Violence

##### A. Offenses Against Persons

##### 10. Malicious Use of Mail or Telecommunications Services

Effective June 1, 2006, 2006 PA 60 and 61 amended MCL 750.540 to include the malicious use of computers or the Internet among the acts punishable by the statute. In the middle of page 107, replace the text of the first bullet under this sub-subsection with the following text:

- ♦ MCL 750.540 makes it a two-year felony to willfully and maliciously cut, break, disconnect, interrupt, tap, or make any unauthorized connection with any electronic medium of communication, to willfully and maliciously read or copy any message from any electronic medium of communication accessed without authorization, to willfully and maliciously make unauthorized use of any electronic medium of communication, or to willfully and maliciously prevent, obstruct, or delay by any means the delivery of any authorized communication by or through any electronic medium of communication. Violation of the statute is a four-year felony “[i]f the incident to be reported results in injury to or the death of any person....”

## Update: Michigan Circuit Court Benchbook

### CHAPTER 2

#### Evidence

#### Part I—General Matters (MRE Articles I, II, III, V, and XI)

#### 2.4 Foundation

##### B. Requirement of Authentication or Identification—MRE 901

Insert the following case summary immediately before subsection (C) on page 29:

Where the physical evidence the prosecution sought to introduce at trial was inconsistent with the testimony of the prosecution's authentication witness regarding that evidence, and where the prosecution was able to offer only speculation as to the reason for the inconsistency, the trial court properly ruled that the prosecution had failed to lay a proper foundation for the evidence's admission. *People v Jambor*, \_\_\_ Mich App \_\_\_ (2006).

In *Jambor*, the prosecution sought to introduce into evidence four white cards, one of which contained the defendant's latent fingerprint, allegedly removed from the scene of a break-in. The evidence technician who collected the latent print died before trial, and the prosecution attempted to authenticate the evidence by testimony from a witness who observed the evidence technician collecting the prints at the crime scene. *Id.* at \_\_\_. However, the witness testified that he had only observed the technician placing the collected prints on black cards, not white ones, and the prosecution was unable to offer a plausible explanation for the inconsistency between the color of the card bearing the defendant's latent fingerprint and the witness' testimony. *Id.* at \_\_\_. The Court of Appeals noted that the question before the Court was whether there was foundational support for the prosecution's claim that the white cards contained latent prints that were actually lifted from the scene, i.e., whether the evidence was what it was claimed to be. *Id.* at \_\_\_. The Court

found that, while one could speculate as to why the defendant's print appeared on a white card rather than a black card, "such speculation is not a sufficient basis to find that the trial court abused its discretion... by concluding that the prosecution failed to authenticate the four white cards and that the proper foundation for admission of the evidence was not established." *Id.* at \_\_\_\_ (footnote omitted).

## CHAPTER 3

### Civil Proceedings

#### Part VII—Rules Governing Particular Types of Actions (Including MCR Subchapters 3.300–3.600)

### 3.60 Arbitration

#### A. Introduction

Insert the following text after the last paragraph of subsection (A) on page 250:

The Michigan Arbitration Act (MAA), MCL 600.5001 et seq., does not preempt common-law arbitration. *Wold Architects and Engineers v Strat*, 474 Mich 223, 225, 238 (2006). Parties wishing to conform their agreements to the requirements of statutory arbitration must put their agreements in writing and require that a circuit court may render judgment upon a resulting award. *Id.* at 235. If these statutory requirements are not satisfied by the language in the parties' agreement, it will be treated as an agreement for common-law arbitration. *Id.* Common-law arbitration agreements continue to be unilaterally revocable before an arbitration award is made. *Id.* at 236–237. Moreover, the parties' conduct during the arbitration process is not sufficient to transform an agreement for common-law arbitration into an agreement for statutory arbitration. *Id.* at 237–238.

In *Wold*, the defendants argued that by enacting the MAA, the Legislature intended to preempt common-law arbitration. Specifically, the defendants argued that the scheme set forth in MCL 600.5001 evidenced the Legislature's intent to occupy the entire area of arbitration law. *Wold, supra* at 234. Citing general laws regarding judicial determination of the Legislature's intent, and noting that certain provisions of the MAA explicitly remove specified agreements to arbitrate from its purview, the Court found that the MAA “does not occupy the entire area of arbitration law and does not preempt common-law arbitration in Michigan.” *Id.* at 235.

The plaintiff in *Wold* argued that the unilateral revocation rule that had always applied to common-law arbitration remained a part of Michigan jurisprudence, and that the parties' conduct alone could not transform the parties' agreement for common-law arbitration into an agreement for statutory arbitration. The Court noted that by not specifically abrogating the unilateral revocation rule, the Legislature evidenced its intent to retain it as a part of Michigan jurisprudence. *Id.* at 236. The Court also noted that the basic statutory requirement that the agreement state in writing that an award is enforceable by the circuit court was not met in this case, and that in the

absence of a writing containing the statutorily required language, the conduct of the parties to an arbitration agreement cannot transform an agreement for common-law arbitration into an agreement for statutory arbitration. *Id.* at 237–238. Accordingly, despite the parties’ acquiescence in using commercial dispute resolution procedures, which include a rule that judgment on an arbitration award may be entered in the circuit court, the Court found that the parties’ agreement remained one for common-law arbitration.

## CHAPTER 4

### Criminal Proceedings

#### Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.21 Search and Seizure Issues

##### E. Was a Warrant Required?

##### 1. “Exigent Circumstances,” “Emergency Doctrine,” or “Hot Pursuit”

Insert the following text after the July 2005 update to page 340:

Where “officers were confronted with ongoing violence occurring within [a] home” during their investigation of a neighbor’s early morning complaint about a loud party, exigent circumstances justified the officers’ warrantless entry. *Brigham City, Utah v Stuart*, 547 US \_\_\_, \_\_\_ (2006) (emphasis omitted). In *Brigham City*, the police officers were responding to a “loud party” complaint when they heard people shouting inside the residence at the address to which they responded. The officers walked down the driveway to further investigate and saw two juveniles drinking beer in the backyard of the residence. Through a screen door and some windows, the officers observed a physical altercation in progress in the kitchen. The officers saw one of the adults spitting blood in the kitchen sink after a juvenile punched him in the face, and when the other adults attempted to restrain the juvenile using force enough to move the refrigerator against which the juvenile was pinned, one of the officers opened the screen door and announced their presence. The officers’ presence went unnoticed until one of them walked into the kitchen and repeated the announcement. The individuals in the kitchen eventually realized that police officers were present and stopped struggling with the juvenile. *Brigham City*, *supra* at \_\_\_.

A law enforcement officer’s warrantless entry of a home is permitted “when [the officer] ha[s] an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.” *Id.* at \_\_\_. The defendants in *Brigham City* argued that evidence discovered as a result of the officers’ warrantless entry should be suppressed because “the officers were more interested in making arrests than quelling violence.” *Id.* at \_\_\_. The United States Supreme Court disagreed and explained that whether an officer’s subjective motivation for a warrantless entry is to provide emergency assistance to an injured person or to seize evidence and effectuate an arrest is irrelevant to a determination of reasonableness. *Id.* at \_\_\_. If an officer’s action is justified under an objective view of the circumstances, the

action is reasonable for Fourth Amendment purposes, regardless of the officer's state of mind. *Id.* at \_\_\_\_.

## CHAPTER 4

### Criminal Proceedings

#### Part III—Discovery and Required Notices (MCR Subchapter 6.200)

##### 4.26 Discovery

###### A. Generally

Insert the following text before the last paragraph on page 361:

Without a showing of good cause, a trial court is not authorized to order discovery of an item not set forth in MCR 6.201. *People v Greenfield*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006). Because a videotape of a defendant's post-arrest Datamaster breath tests is not a subject of mandatory discovery expressly listed in MCR 6.201(A) and is not contemplated by the categories of discoverable evidence described in MCR 6.201(B), a trial court may not compel its discovery absent good cause. *Greenfield, supra* at \_\_\_. A prosecutor's failure to produce evidence not addressed by MCR 6.201's description of discoverable evidence does not constitute "good cause" for entry of an order under MCR 6.201(I) to produce such evidence. *Greenfield, supra* at \_\_\_.

## Update: Sexual Assault Benchbook

### CHAPTER 5

#### Bond and Discovery

##### 5.14 Discovery in Sexual Assault Cases

###### B. Discovery Rights

###### 1. Generally

Insert the following text after the January 2006 update to page 269:

Without a showing of good cause, a trial court is not authorized to order discovery of an item not set forth in MCR 6.201. *People v Greenfield*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006). Because a videotape of a defendant's post-arrest Datamaster breath tests is not a subject of mandatory discovery expressly listed in MCR 6.201(A) and is not contemplated by the categories of discoverable evidence described in MCR 6.201(B), a trial court may not compel its discovery absent good cause. *Greenfield, supra* at \_\_\_. A prosecutor's failure to produce evidence not addressed by MCR 6.201's description of discoverable evidence does not constitute "good cause" for entry of an order under MCR 6.201(I) to produce such evidence. *Greenfield, supra* at \_\_\_.

## Update: Traffic Benchbook— Third Edition, Volume 3

### CHAPTER 2

#### Procedures in Drunk Driving and DWLS Cases

##### 2.6 Arraignment/Pretrial Procedures

###### F. Discovery

###### 1. Mandatory Discovery

Insert the following text after the first full paragraph on page 65:

A videotape of the booking procedures in a drunk driving or DWLS case is not a subject of mandatory discovery under MCR 6.201. Therefore, absent a showing of good cause, a defendant is not entitled to this evidence. *People v Greenfield*, \_\_\_ Mich App \_\_\_ (2006).

In *Greenfield*, the district court ordered the prosecution to turn over to the defendant a videotape of the defendant during booking, which included the administration of Datamaster breath tests. The tape requested by the defendant had been erased and was no longer available. When the prosecution failed to produce the videotape, the district court barred it from introducing the test results. *Id.* at \_\_\_. The Court of Appeals reversed, finding that the videotape is not subject to mandatory discovery under MCR 6.201, and that the defendant had failed to show good cause for discovery of the tape under MCR 6.201(I). *Greenfield, supra* at \_\_\_.